

EDWARD PARISIAN
v.
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-96-A

Decided December 3, 1990

Appeal from a denial of an application to modify a loan under the Indian Revolving Loan Program.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Generally--
Indians: Financial Matters: Financial Assistance

Under 25 CFR 2.7(a), it is the responsibility of a Bureau of Indian Affairs deciding official to give notice of the decision to all interested parties known to the official.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Edward Parisian seeks review of an April 4, 1990, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying his application to modify a loan under the Indian Revolving Loan Program. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

In May 1987, appellant and his wife were approved for a loan in the amount of \$37,500. The funds were to be used to purchase a mobile home and build a garage on the Rocky Boy's Reservation. In January 1990, they sought to increase the loan by \$10,000, to finance landscaping and improvements to a barn.

On April 4, 1990, the Area Director denied the loan modification request, stating, in a memorandum to the Superintendent, Rocky Boy's Agency, BIA:

At the time of the approval of [the original] loan, [appellant] was Superintendent of the Rocky Boy Elementary School and, Mrs. Parisian was a school teacher in Box Elder School. The house and garage were completed with the funds from this loan.

The Parisians have now applied for an additional loan from the U.S. Government for other improvements on their property. [Appellant] was appointed as Deputy to the Assistant Secretary

and Director of Indian Education Programs in the Bureau of Indian Affairs as of February 1, 1990.

The Indian Financing Act of 1974 was passed by Congress to provide Government loans to Indian tribes and individual Indians who are unable to obtain financing on reasonable terms and conditions from other sources. The funds in this program are limited and some viable Indian borrowers cannot be approved because of a lack of funds in the program.

The intent of Congress was not to provide Government loans to all Indians, but to attempt to provide loans to those borrowers who are unable to obtain financing from other sources. The Parisians enjoy a substantial income and have been able to obtain financing from at least six other lenders, totaling outstanding debts of \$57,000.

By letter dated April 12, 1990, the Superintendent informed appellant of the denial, stating: "Your request for a Modification has been returned from the Billings Area office disapproved. The loan was disapproved because the purpose of this loan was not for basic housing and you do not meet the basic qualifications for a direct loan from the government." The Superintendent informed appellant that he could appeal the decision to the Area Director. On May 1, 1990, appellant filed a notice of appeal with the Area Director, who forwarded it to the Board.

The appeal was docketed on June 19, 1990. No briefs were filed.

Discussion and Conclusions

[1] It is apparent that the irregular procedures followed by the Area Director and the Superintendent in this matter have resulted in unnecessary complication of the appeal process. Under 25 CFR 2.7(a), it was the Area Director's responsibility to notify appellant of his decision. ^{1/} Instead, he sent a memorandum to the Superintendent, giving his reasons for denying appellant's application and requesting the Superintendent to notify appellant of the decision and of his right to appeal. The Superintendent's letter included only an abbreviated and inaccurate gloss of the Area Director's rationale for his decision, and apparently did not append a copy of the Area Director's April 4, 1990, memorandum. The letter also gave incorrect appeal information, advising appellant that he could appeal to the Area Director, rather than the Board.

During the course of this appeal, appellant was furnished with a copy of the Area Director's April 4, 1990, memorandum as well as his May 22, 1990, memorandum, which expresses similar reasons for the denial. Appellant has had an opportunity to respond to these memoranda, although, he has

^{1/} 25 CFR 2.7(a) provides: "The official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail."

not done so. Under the circumstances present here, the Board will consider the merits of this appeal. 2/

Decisions concerning whether or not to approve a loan under the Indian Revolving Loan Program are decisions based on the exercise of discretion. S & H Concrete Construction, Inc. v. Acting Phoenix Area Director, 19 IBIA 69 (1990), and cases cited therein. In reviewing such discretionary decisions, the Board does not substitute its judgment for that of BIA. Rather, it is the Board's responsibility to ensure that no violation of law or regulation accompanies BIA's exercise of discretion. See, e.g., Aubertin Logging & Lumber Enterprises v. Acting Portland Area Director, 18 IBIA 307 (1990). Further, the Board has held that discretionary decisions by BIA officials should be reasonable. Absentee Shawnee Tribe v. Anadarko Area Director, 18 IBIA 156 (1990).

Loans to Indians under the Indian Revolving Loan Program are governed by Title I of the Indian Financing Act of 1974, 25 U.S.C. §§ 1461-1469 (1988). 25 U.S.C. § 1463 (1988) provides: "Loans may be made only when, in the judgment of the Secretary, there is a reasonable prospect of repayment, and only to applicants who in the opinion of the Secretary are unable to obtain financing from other sources on reasonable terms and conditions."

In this case, in light of the limited funds available under the program, appellant's apparent ability to obtain financing from private sources, and his substantial income, it was reasonable for the Area Director to deny his application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Billings Area Director's April 4, 1990, decision is affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

2/ The Board has held, however, that the reason for denial of a loan application must be communicated to the applicant, and that the failure to do so is cause for remand. See Cochran v. Acting Billings Area Director, 18 IBIA 406 (1990).

In this case, because appellant has been informed of the reasons for denial, albeit belatedly, and has had an opportunity to challenge those reasons, and further, because there appears to be almost no possibility that appellant would obtain a different result on remand, the Board does not remand.